

CLERK'S COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 234

G. F. ALBIN, PETITIONER,

vs.

**COWING PRESSURE RELIEVING JOINT COMPANY,
ETC., ET AL.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT**

PETITION FOR CERTIORARI FILED JULY 15, 1942.

CERTIORARI GRANTED OCTOBER 12, 1942.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No.

G. F. ALBIN, PETITIONER,

vs.

COWING PRESSURE RELIEVING JOINT COMPANY,
ETC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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[Caption omitted]

[fol. 3]

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION**

In Bankruptcy No. 77464

**In the Matter of COWING PRESSURE RELIEVING JOINT COM-
PANY, An Unincorporated Company or Association, An
Alleged Bankrupt**

**PETITION BY CREDITOR FOR INVOLUNTARY ADJUDICATION—
Filed February 9, 1942**

**To the Honorable, the Judges of the District Court of the
United States, for the Northern District of Illinois, East-
ern Division:**

**The petition of G. F. Albin, of the City of Chicago, Illi-
nois, respectfully represents:**

1. Cowing Pressure Relieving Joint Company is an unin-
corporated company or association, and is engaged in the
business of manufacturing and selling lead joints for build-
ings; and has had its principal place of business at 226
West Superior Street, Chicago, Illinois, within the above
judicial district for a longer portion of the six months im-
mediately preceding the filing of this petition than in any
other judicial district.

2. Said Cowing Pressure Relieving Joint Company owes
debts to the amount of \$1,000 and over and is a person who
could be a bankrupt under Section 4 of the Bankruptcy Act.

3. The creditors of said Cowing Pressure Relieving Joint
Company are less than twelve in number, and your peti-
tioner is one of its creditors, having a provable claim
amounting to the sum of \$500 and more in excess of securi-
ties held by your petitioner, said claim being for moneys
which became due Peter Masterson for salaries or for
[fol. 4] moneys advanced by him to said company in the
sum of \$2,620.12 and in additional amounts, and which
claims were acquired by your petitioner by purchase from
John H. Chatz, Trustee in Bankruptcy for the estate of said

Peter Masterson, pursuant to orders entered by this court in the matter of Peter Masterson, in bankruptcy No. 76053.

4. Your petitioner further represents that the said alleged bankrupt committed an act of bankruptcy in that it did heretofore within ~~four~~ (4) months of the filing of this petition, to wit, on or about December 15, 1941, while insolvent, pay to Walter N. Darby, as agent for the owner of the premises at 226 West Superior Street, Chicago, Illinois, a large sum of money on account of delinquent and past due rents on said premises with intent to prefer such agent and owners over the other creditors of said alleged bankrupt, the amount paid and the exact dates of payments not being known to your petitioner at this time, but all of which information is contained in the alleged bankrupt's books and records, which books and records are hereby incorporated herein and made a part of this petition by reference thereto, and examination of which will disclose all such information to the court.

5. Your petitioner further represents that the said alleged bankrupt committed an act of bankruptcy in that it did heretofore, to wit, within four months of the filing of this petition, commit divers acts of bankruptcy in that it did at divers times and while insolvent transfer portions of its property by making cash payments to certain of its creditors with intent to prefer such creditors over the other creditors of said alleged bankrupt, the amounts paid, the dates of payments, and the names of such creditors not being known to your petitioner at this time, but all of which [fol. 5] information is contained in the alleged bankrupt's books and records, which books and records are hereby incorporated herein and made a part of this petition by reference thereto, and examination of which will disclose all such information to the court.

Wherefore, your petitioner prays that service of this petition, with writ of subpoena, may be made upon said Cowing Pressure Relieving Joint Company, an unincorporated company or association, as provided in the Acts of Congress relating to bankruptcy, and that it may be adjudged by the court to be a bankrupt within the purview of said acts; and petitioner further prays that an order may be entered in this cause specifically referring the same to a referee in bankruptcy to the end that your petitioner

may be enabled to conduct an examination of the alleged bankrupt and its books and records relative to its business and affairs.

G. F. Albin, Petitioner, by Thomas S. McCabe, His Attorney and duly authorized agent.

Duly sworn to by Thomas S. McCabe. Jurat omitted in printing.

[fol. 6] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER—Filed March 20, 1942

Now comes Peter Masterson, not personally or individually but as Trustee under the Trust Agreement dated August 5, 1921 by and between John P. Cowing, Peter Masterson, Francis O'Shaughnessy and John P. O'Shaughnessy, sued herein as Cowing Pressure Relieving Joint Company, an unincorporated company or association, appears and answers the petition filed in the above court on the 9th day of February, 1942, praying that Cowing Pressure Relieving Joint Company, an unincorporated company or association, be adjudged a bankrupt, as follows:

1. Respondent denies that Cowing Pressure Relieving Joint Company is properly designated as an unincorporated company or association, and states that the proper designation of the alleged bankrupt is Peter Masterson, not personally or individually but as Trustee under the Trust Agreement dated August 5, 1921 by and between John P. Cowing, Peter Masterson, Francis O'Shaughnessy and John P. O'Shaughnessy.

2. Respondent admits the allegations of paragraph 2 of the petition, except the allegation that respondent is an unincorporated company or association.

3. Respondent denies that all of the creditors of the trust [fol. 7] sued herein as Cowing Pressure Relieving Joint Company are less than twelve in number, as alleged in the petition, and says that the following is a true list of the creditors thereof showing the names, addresses, amount owing to each, and the security, if any, held by each:

Creditor	Address	Amount	Security
Donald Masterson	1053 North Shore Avenue, Chicago, Illinois	\$550 00	None
Peter Masterson	1053 North Shore Avenue, Chicago, Illinois	\$19 11	None
Rose Wise Cowing	4743 North Wolcott Avenue, Chicago, Illinois	\$4239 73	None
John Toman, County Collector	County Building, Chicago, Illinois	\$363 35	None
Carter Harrison, Collector of Internal Revenue	Federal Building, Chicago, Illinois	Unknown	None
Rocky Mountain Contractor	Denver, Colorado	\$5 00	None
G. F. Albin	c/o Thomas S. McCabe, 105 West Monroe Street, Chicago, Illinois	\$2620 12	None
Offield Melhope, Scott & Pool	33 South Clark Street, Chicago, Illinois	\$250 25	None
Thomas Hart Fisher	135 South LaSalle Street, Chicago, Illinois	Indeterminate and unknown	Books, documents and records of the Trustee, together with the sum of approximately \$11,000.00 in cash
William Masterson	1053 North Shore Avenue, Chicago, Illinois	Approximately \$200.00	None
[fol. 8]			
National Lead Company	900 West 18th Street, Chicago, Illinois	\$1699 81	None
Walter N. Darby, Receiver appointed by the Superior Court of Cook County, case number 388 10116	228 West Kinzie Street, Chicago, Illinois	\$117 77	None
Mary Newberry, c/o Walter N. Darby	228 West Kinzie Street, Chicago, Illinois	\$127 23	None
Chicago Towel & Supply Company	160 North Wells Street, Chicago, Illinois	\$10 50	None
Commonwealth Edison Company	72 West Adams Street, Chicago, Illinois	\$16 51	None
Chicago Blue Print Company	135 South LaSalle Street, Chicago, Illinois	\$2 98	None
Prentice-Hall, Inc.	222 West Adams Street, Chicago, Illinois	\$2 72	None
Walton Joplin Langer & Company	231 South LaSalle Street, Chicago, Illinois	\$500 00	None
William H. McArthur	4400 West Parker Street, Chicago, Illinois	\$1750 00	None
Henry J. & Charles Aaron	33 South Clark Street, Chicago, Illinois	Indeterminate	Attorneys' lien on sundry documents, money, etc.
Willard C. Walters	135 South LaSalle Street, Chicago, Illinois	Indeterminate	Attorney's lien on sundry documents, money, etc.
Charles E. Masterson	1053 North Shore Avenue, Chicago, Illinois	\$4783 33	None

[fol. 9] 4. None of said creditors above named were employed by this respondent on the 9th day of February, 1942, the date on which said petition was filed.

5. None of said creditors is the owner of any interest in the aforesaid trust, except Rose Wise Cowing.

6. None of said creditors except Walter N. Draby, as Receiver appointed by the Superior Court of Cook County, Number 388 10116, and Mary Newberry, have received any benefit from the payments alleged by the petitioning creditor as an act of bankruptcy, but respondent denies that the act alleged as an act of bankruptcy was in fact an act of bankruptcy, and denies that the respondent is or was at the time of said payments insolvent.

7. None of said claims are fully secured, with the exception of the claim of Thomas Hart Fisher, who in fact is indebted to this respondent.

8. None of said creditors have received preferences, liens or transfers void under the Bankruptcy Act.

9. Further answering, respondent denies that G. F. Albin is a person entitled to file a petition herein as a petitioning creditor. Respondent states the fact to be that on July 17, 1941 a petition in bankruptcy was filed against Peter Masterson, individually; that on September 15, 1941 Peter Masterson was adjudged a bankrupt, and on February 7, 1942, pursuant to orders by the Referee in Bankruptcy, the claim of Peter Masterson personally in the sum of \$2,620.12 against [fol. 10] Peter Masterson, as Trustee aforesaid, sued herein as Cowing Pressure Relieving Joint Company, was purchased by G. F. Albin, for the sum of \$925.00, subject to all liens and incumbrances. Said claim in fact on or about January 15, 1935 was assigned by the said Peter Masterson, individually, to Rose Wise Cowing, also known as Mrs. John P. Cowing, as security for the indebtedness of Peter Masterson, individually, to the said Rose Wise Cowing, and is subject to said assignment to Rose Wise Cowing and also is subject and subordinate to all other claims against the said trust, with the exception of the claim of the said Rose Wise Cowing for the sum of \$4,239.73 scheduled above, which said claim purchased by G. F. Albin and said claim of Rose Wise Cowing were not to be paid until all other claims against the trust were fully paid for the reason that

Rose Wise Cowing and Peter Masterson were the sole beneficiaries of the said trust, (the interest of Peter Masterson in the said trust also having been purchased by G. F. Albin at the bankruptcy sale on February 7, 1942). On October 3, 1940 respondent filed a petition in the Superior Court of Cook County, Illinois, in case Number 348 18698, against Thomas Hart Fisher, alleging that the said Thomas Hart Fisher held a sum of money in excess of \$11,000.00 constituting the property of the said trust, and also held certain books, documents, records and instruments of the trust, all of which he refused to deliver to respondent. Thereafter the said petition, the answer of said Thomas Hart Fisher, and the reply of respondent thereto, were referred to John J. Kelly, one of the Masters in Chancery of the Superior Court. In excess of twenty five hearings on the subject matter of said petition, answer and reply have been held before the said Master in Chancery, and a rule to close proofs in said proceeding on February 16, 1942 was entered on January 27, 1942, and thereafter on motion of Thomas Hart Fisher was continued to February 23, 1942. On February 21, 1942, without notice to respondent or any person interested in this proceeding, except said Thomas Hart Fisher, the petitioning creditor herein obtained an order restraining further proceedings in said superior court case. On or about December 5, 1941 the said G. F. Albin, through Thomas S. McCabe, his attorney, attempted to purchase the claim of W. S. Darby, as Receiver appointed in Superior Court case Number 388 10116, against the petitioner, for the full face amount of said claim, but the Superior Court of Cook County denied leave to its Receiver to sell said claim for the reason that Thomas S. McCabe refused to disclose the name of the person who actually desired to purchase the claim or the purpose for which he desired to purchase it. Respondent further states it is his opinion that the true owner of the said claim on which this petition in bankruptcy has been filed is Thomas Hart Fisher, and that said claim was purchased, as aforesaid, for the sole purpose of instituting this proceeding and defeating the recovery by respondent in the Superior Court of Cook County, Illinois of the sum due the respondent from the said Thomas Hart Fisher. Further answering, respondent states that the said Thomas Hart Fisher, being indebted to petitioner for a sum of money substantially in excess of \$2,620.12, the

claim on which said petition purports to be predicated in [fol. 12] fact is non-existent.

10. Respondent denies that the trust sued herein as Cowing Pressure Relieving Joint Company, intended to prefer any of its creditors, as alleged in the petition.

11. Respondent further states that the allegations of acts of bankruptcy in all respects are vague, indefinite and insufficient to set forth the proper grounds for the adjudication of this respondent as a bankrupt.

12. Respondent denies that any transfers were made with intent to prefer any creditor, and denies each and every other allegation contained in the petition.

Wherefore, respondent prays that a hearing may be had on said petition and this answer, and that the issues presented thereby may be determined by the Court, and that the petition to have Cowing Pressure Relieving Joint Company adjudged a bankrupt may be dismissed.

Peter Masterson (s), Trustee under Four-Party Agreement dated August 5, 1921, etc., sued herein as Cowing Pressure Relieving Joint Company. Henry J. Charles Aaron, Charles Aaron, Sidney J. Hess, Jr., Willard C. Walters, Attorneys for alleged bankrupt.

Duly sworn to by Peter Masterson. Jurat omitted in printing.

[Vol. 13] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR RESTRAINING ORDER—Filed February 21, 1942

Now comes G. F. Albin and respectfully represents unto your Honor that he is the petitioning creditor, having heretofore filed an involuntary petition in bankruptcy praying among other and sundry relief that Cowing Pressure Relieving Joint Company be adjudicated a bankrupt.

Your petitioner further represents that said alleged bankrupt has virtually ceased to do business and to discharge those functions for which it was created; that with the ex-

ception of some furniture, fixtures and machinery valued at approximately several hundred dollars, and some dubious accounts receivable, the only other asset it has is in the nature of a certain claim in an amount which it alleges is in the sum of from approximately \$9,000 to \$11,000. Peter Masterson is trustee of said alleged bankrupt.

Your petitioner further represents that the alleged debtor is Thomas Hart Fisher of Chicago, Illinois, and that heretofore in a certain proceeding entitled "*Felix B. Kilbride, as administrator with the will annexed of the Estate of Michael Masterson, deceased, Plaintiff, vs. Peter Masterson, et al.*, Defendants, No. 34S 18698 in the Superior Court of Cook County," there has been a petition filed by the alleged [fol. 14] bankrupt herein seeking to recover said funds; that in said proceedings the said Thomas Hart Fisher filed certain counterclaims alleging that instead of being indebted to the said debtor in the various sums claimed that the alleged bankrupt is indebted to said Fisher after all just deductions and credits, in a sum which as your petitioner is informed will exceed approximately \$1,000.

Your petitioner further represents that this said matter has been referred and is pending before Master John J. Kelly, a master in chancery of the Superior Court of Cook County, and that there has been a hearing scheduled to take place on Monday, February 23, at the hour of two o'clock P. M.; that unless the parties involved in said litigation and said hearing are restrained and enjoined from further proceeding, there is grave and imminent danger that this principal asset of the debtor may be dissipated and wholly lost to this estate.

Your petitioner further states that it is to the best interest of the creditors of this estate that when an adjudication has been entered in these proceedings and a trustee in bankruptcy has been duly elected by the creditors that the said trustee should investigate all the facts pertaining to this subject matter and that this Court should have jurisdiction in marshalling and collecting the said asset for the benefit of all the creditors; that the said alleged bankrupt is indebted to various creditors in an amount, as your petitioner is informed and therefore charges the fact to be, in excess of \$15,000, and that if this asset is lost to this estate there will be irretrievable damage incurred to all the creditors, including your petitioner.

Your petitioner further represents that in addition to the aforementioned suit, the National Lead Company of [fol. 15] Chicago, Illinois, has instituted an action in The Municipal Court of Chicago against the bankrupt herein, in which suit the National Lead Company alleges there is due to it the sum of approximately \$2,500. Your petitioner therefore states that said suit should likewise be restrained until the further order of this Court.

Wherefore, your petitioner prays that an order may be entered restraining and enjoining Cowing Pressure Relieving Joint Company, the alleged bankrupt, its agents and attorneys, Peter Masterson, Trustee, Thomas Hart Fisher, and National Lead Company, their agents and attorneys, from in any way prosecuting any and all suits, at law or in equity, against or by the alleged bankrupt herein, Cowing Pressure Relieving Joint Company, until the further order of this Court.

And your petitioner will ever pray.

G. F. Albin.

Duly sworn to by G. F. Albin. Jurat omitted in printing.

[fol. 16] IN UNITED STATES DISTRICT COURT

[Title omitted]

RESTRAINING ORDER—February 21, 1942

This matter coming on to be heard upon the petition and motion of G. F. Albin, petitioning creditor herein,

It Is Therefore Ordered that Cowing Pressure Relieving Joint Company, the alleged bankrupt, its agents and attorneys, Peter Masterson, Trustee, Thomas Hart Fisher, and National Lead Company, its agents and attorneys, be and they each are hereby restrained and enjoined from the prosecution of any and all claims against the alleged bankrupt herein until the further order of this Court; and that the said Peter Masterson and Thomas Hart Fisher and the alleged bankrupt be and they are hereby specifically enjoined and restrained from any and all further proceedings now pending in the Superior Court of Cook County in the case entitled "Felix B. Kilbride, as administrator with the

will annexed of the Estate of Michael Masterson, deceased, Plaintiff, vs. Peter Masterson, et al., Defendants, No. 34S 18698 in the Superior Court of Cook County," until the further order of this Court.

Enter:

Igoe, Judge.

[fol. 17] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION TO SET ASIDE RESTRAINING ORDER—Filed March 20, 1942

To the Honorable Michael L. Igoe, one of the Judges of the District Court of the United States, for the Northern District of Illinois, Eastern Division:

Now comes Peter Masterson, Trustee under the trust agreement dated August 5, 1921, by and between John P. Cowing, Peter Masterson, Francis O'Shaughnessy and John P. O'Shaughnessy, sued herein as Cowing Pressure Relieving Joint Company, an unincorporated company or association, an alleged bankrupt, and alleges:

1. That heretofore, on February 9, 1942, G. F. Albin filed his petition herein to have Cowing Pressure Relieving Joint Company, an unincorporated company or association, adjudged a bankrupt, and alleged that the total number of creditors of said Cowing Pressure Relieving Joint Company was less than twelve (12), and further alleged certain acts of bankruptcy.

2. That service of the subpoena in bankruptcy was not made upon this petitioner until March 14, 1942; that petitioner has filed an answer in this proceeding on behalf of [fol. 18] Cowing Pressure Relieving Joint Company, an unincorporated company or association, denying that said company is insolvent, alleging that the trust sued herein as Cowing Pressure Relieving Joint Company has more than twelve (12) creditors, and further alleging that the petition in bankruptcy was improperly filed and should be dismissed.

3. That on or about October 3, 1940, petitioner, as trustee under the said trust agreement dated August 5, 1921, filed a petition in the Superior Court of Cook County, Illinois,

in case number 34S 18698, alleging that Thomas Hart Fisher, an attorney at law of Chicago, Illinois, held in his possession moneys belonging to the said trust in a sum in excess of \$11,398.49, and also held property of the trust, consisting of books, records, documents and other instruments which the said Fisher wrongfully refused to deliver to this petitioner; that issue was joined in said proceeding, and the cause thereafter was referred to John J. Kelly, one of the Masters in Chancery of the Superior Court of Cook County, Illinois; that more than twenty-five hearings on the issues of said petition, the answer thereto and the reply of this petitioner, have been held before the said John J. Kelly, Master in Chancery, and that an order was entered by the said Master in Chancery on January 27, 1942 directing that all parties to said proceeding pending before him should close proofs on February 16, 1942; that the rule to close proofs before the said John J. Kelly on February 16, 1942, was, on motion of the said Thomas Hart Fisher, continued to February 23, 1942.

4. That a petition in bankruptcy against Peter Masterson individually heretofore was filed in this Court on July 17, 1941; that the said Peter Masterson individually was [fol. 19] adjudged bankrupt on September 15, 1941, and that pursuant to orders entered in said cause, G. F. Albin, the sole petitioning creditor in this proceeding, on February 7, 1942, purchased from John H. Chatz, trustee in bankruptcy for Peter Masterson individually, for the sum of \$925.00, the claim of Peter Masterson individually against the trust, sued herein as Cowing Pressure Relieving Joint Company, in the sum of \$2620.12, and also purchased the beneficial interest of Peter Masterson in said trust; that said claim purchased by G. F. Albin from John H. Chatz, trustee in bankruptcy, is subordinate to the claims of other creditors of the said trust, sued herein as Cowing Pressure Relieving Joint Company, and is subject to a lien owned by Rose Wise Cowing, and was purchased by the said G. F. Albin subject to all liens and encumbrances.

5. That prior to the institution of this proceeding and on or about the 5th day of December, 1941, the petitioning creditor herein, G. F. Albin, attempted to purchase, for the full face amount thereof, the claim of Walter N. Darby as receiver in Superior Court case No. 38S 10116, entitled Pauline Newberry vs. Abraham Siegel, against this peti-

tioner as trustee, but the Superior Court of Cook County directed the said receiver not to sell the said claim to G. F. Albin upon the refusal of Thomas S. McCabe, attorney for G. F. Albin, to disclose the identity of the real purchaser of the claim or the reason why he desired to purchase the claim.

6. That on February 21, 1942, G. F. Albin filed his petition herein, praying that the prosecution of the proceeding against Thomas Hart Fisher in the Superior Court of Cook County, Illinois, should be restrained until further [fol. 20] order of this Court, and that on said date an order was entered herein, restraining petitioner and others from proceeding in said cause, and that said order was obtained without notice to petitioner or any other person interested in said Superior Court proceeding with the exception of the said Thomas Hart Fisher.

7. That the so-called counterclaim of Thomas Hart Fisher against this petitioner, set forth in the petition for the restraining order entered herein on February 21, 1942, is without merit; that a substantial portion of the assets of the said trust, sued herein as Cowing Pressure Relieving Joint Company, consists of the claim against Thomas Hart Fisher; that in the opinion of this petitioner there will be no question of the solvency of the said trust if recovery is made in said proceeding, and in the opinion of this petitioner it is to the best interest of petitioner and all of the creditors of the said trust that said proceeding in the Superior Court of Cook County, Illinois, be consummated without delay; petitioner denies the allegation of the said petition for the restraining order that it is to the best interest of the trust estate to restrain the prosecution of said Superior Court proceedings.

8. That it is the opinion of petitioner that this bankruptcy proceeding has been instituted for the sole purpose of defeating the claim of petitioner as trustee, sued herein as Cowing Pressure Relieving Joint Company, against Thomas Hart Fisher, and that consistent with said purpose, the petitioning creditor herein forthwith upon the acquisition of his claim from the trustee in bankruptcy for Peter Masterson individually, filed this proceeding, and without notice to this petitioner, caused the restraining [fol. 21] order herein to be entered; that notwithstanding

the motive for the institution of this proceeding, it is to the best interest of the bankrupt estate that the proceeding pending before John J. Kelly, Master in Chancery, be completed forthwith and if the alleged bankrupt herein be adjudged a bankrupt, the recovery in said proceeding will inure to the benefit of the bankrupt estate.

Wherefore, petitioner respectfully prays that an order be entered herein, dissolving, vacating and setting aside the restraining order entered in this proceeding on February 21, 1942, and that the Court grant to petitioner such other relief as to the Court may seem proper.

Peter Masterson, Trustee under Four Party Trust Agreement dated August 5, 1921, etc., sued herein as Cowing Pressure Relieving Joint Company.

Duly sworn to by Peter Masterson. Jurat omitted in printing.

[fol. 22] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS PETITION TO VACATE RESTRAINING ORDER
—Filed March 26, 1942

To the Honorable Michael L. Igoe, One of the Judges of the District Court of the United States, for the Northern District of Illinois, Eastern Division:

Now comes G. F. Albin, by Thomas S. McCabe, his attorney, and moves this court that an order may be entered dismissing the petition heretofore filed by Peter Masterson, Trustee, praying that an order may be entered dissolving, vacating and setting aside the restraining order entered in these proceedings on February 21, 1942; and in support of said motion, this respondent represents that:

1. In accordance with Chapter III, Section XI of the Bankruptcy Act as amended in 1938, it is provided that:

“A suit against a debtor pending at the day of the bankruptcy petition and founded upon a claim dischargeable in

bankruptcy; shall be stayed until the debtor's adjudication or dismissal of the petition. Upon the adjudication, such suit may be further stayed until his discharge has been determined by the court after hearing, or by his written waiver or loss of his right to a discharge; or in the case of [fol. 23] a corporation by its failure to apply for a discharge within the time specified under the Act."

That the said restraining order complained of, when entered, merely affirmed the law as it then existed; and that the litigation described in said petition could not have proceeded further until this court determined the adjudication of the bankrupt herein.

2. That; on the face of the said petition, it is admitted that in said litigation, which has heretofore been enjoined from proceeding further, Thomas Hart Fisher, against whom it is sought to recover an account for certain sums of money, has instituted in said proceedings a counterclaim; that, from an examination of said pleadings in said proceedings, it appears that said Thomas Hart Fisher claims that the alleged bankrupt herein is indebted to him in a far greater sum than that which the alleged bankrupt claims is due it from the said Thomas Hart Fisher. Said claim against this bankrupt is a claim dischargeable in bankruptcy.

3. That, at this time there has been an answer filed to the involuntary petition for adjudication herein and this cause is now at issue. That your petitioner, as a petitioning creditor, is ready, willing and able to forthwith proceed before this court, or before such Referee as to whom this court may refer, and try these issues.

Wherefore, by reason of the foregoing, it appearing that said petition was prematurely filed, this respondent prays that the said petition be dismissed; and this respondent will ever pray.

G. F. Albin, by Thomas S. McCabe, His Attorney.

Pennish & Rashbaum, 110 S. Dearborn St.

[fol. 24] *Duly sworn to by Thomas S. McCabe, Jurat omitted in printing.*

[fol. 25] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER VACATING RESTRAINING ORDER—March 26, 1942

This cause coming on to be heard on the verified petition of Peter Masterson, Trustee under a four party trust agreement dated August 5, 1921, by and between John P. Cowing, Francis O'Shaughnessy and John P. O'Shaughnessy, sued herein as Cowing Pressure Relieving Joint Company, an unincorporated company or association, an alleged bankrupt, for the entry of an Order vacating and setting aside the Order entered herein on February 21, 1942, restraining the said Peter Masterson, as Trustee aforesaid, from proceeding with the prosecution of a cause pending in the Superior Court of Cook County, Illinois, case number 34S 18698 against Thomas Hart Fisher, and it appearing to the Court that said restraining order was entered without notice to Peter Masterson, as Trustee aforesaid, and that due notice of the presentation of this motion has been served upon all parties entitled to notice, and the Court having examined said petition, and being fully advised as to the facts, and having jurisdiction of the parties hereto and the subject matter hereof:

It is Ordered that the order entered herein on February [fol. 26] 21, 1942, restraining Peter Masterson, as Trustee, his agents, attorneys and representatives and others from proceeding in the prosecution of the proceeding pending against Thomas Hart Fisher in the Superior Court of Cook County, case number 34S 18698, be and the same is hereby vacated and set aside, and that the said Peter Masterson, as Trustee aforesaid, his agents, attorneys and representatives, and others interested in said proceeding, be and they are hereby authorized to proceed in the same manner as if said order, entered herein on February 21, 1942, had not been entered.

Enter:

Barnes, District Judge.

March 26, 1942.

[fol. 27] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL—Filed March 31, 1942

To Willard C. Walters, 135 South LaSalle Street, Chicago, Illinois; Henry J. and Charles Aaron, 33 South Clark Street, Chicago, Illinois:

Notice is hereby given that G. F. Albin, petitioning creditor in the above entitled cause, hereby appeals to the United States Circuit Court of Appeals for the Seventh Circuit from the interlocutory order or decree entered in this cause by the Honorable John P. Barnes, Judge of this Court, on the 26th day of March, 1942, which said order or decree dissolved and vacated the order heretofore entered in this cause on February 21, 1942 restraining and enjoining the alleged bankrupt and others from the prosecution of any and all claims against the alleged bankrupt until the further order of this Court, and specifically enjoining and restraining Peter Masterson and Thomas Hart Fisher and the alleged bankrupt from any and all further proceedings now pending in the Superior Court of Cook County, Illinois, in the case entitled "Felix B. Kilbride, as Administrator with the will annexed of the Estate of Michael Masterson, deceased, Plaintiff, v. Peter Masterson, et al., defendants, No. 34S 18698 in the Superior Court of Cook County," until further order of this court.

G. F. Albin, Petitioning Creditor, by Thomas S. McCabe, His Attorney. Thos. S. McCabe, 105 West Monroe Street, Room 1004, Chicago, Illinois, Telephone: STate 2682.

[fol. 28] IN THE DISTRICT COURT OF THE UNITED STATES

CERTIFICATE OF MAILING NOTICE OF APPEAL

I, Hoyt King, Clerk of the United States District Court, for the Northern District of Illinois, Eastern Division, keeper of the Seal and Records of said Court, do hereby certify that on the 1st day of April, 1942, in accordance with Rule 73 (b) of the Rules of Civil Procedure for District

Courts of the United States, I did cause to be mailed a copy of the foregoing Notice of Appeal to the following attorneys of record:

Willard C. Walters, 135 South LaSalle St., Chicago, Illinois.

Henry J. & Charles Aaron, 33 South Clark Street, Chicago, Illinois.

Hoyt King, Clerk. (Seal.)

[fol. 29] Bond on appeal for \$250, filed March 31, 1942, omitted in printing.

[fol. 30] IN UNITED STATES DISTRICT COURT

[Title omitted]

STATEMENT OF POINTS—Filed April 1, 1942

Now comes G. F. Albin, Petitioning Creditor, plaintiff-appellant in the above entitled cause, by Thos. S. McCabe, his attorney, and having designated for inclusion in the designation of contents of record on appeal the complete record, proceedings and evidence in this cause in this Court, and having thereby reserved the right to present any and all matters and issues on appeal in said appeal, does nevertheless herewith file the following statements of points upon which he will principally rely in the prosecution of said appeal herein taken:

1. The court erred in dissolving and vacating the restraining order entered in this cause on February 21, 1942.

G. F. Albin, Petitioning Creditor, Plaintiff-Appellant,
by Thomas S. McCabe, His Attorney. Thos. S.
McCabe, Attorney for Plaintiff-Appellant, 105 W.
Monroe Street, Room 1004, Chicago, Illinois.

Received a copy of the foregoing "Statement of Points" this 30 day of March, A. D. 1942.

Henry J. — Charles Aaron. Willard C. Walters.

[fol. 31] IN UNITED STATES DISTRICT COURT

, [Title omitted]

DESIGNATION OF PORTIONS OF THE RECORD—Filed April 1, 1942

Now comes G. F. Albin, as petitioning creditor herein, plaintiff-appellant, by Thos. S. McCabe, his attorney, and hereby designates the following portions of the record to be contained in the record on appeal:

1. Placita.
2. Petition by creditor for involuntary adjudication, filed on February 9, 1942.
3. Answer of Peter Masterson, not personally or individually but as Trustee under the Trust Agreement dated August 5, 1921, sued herein as Cowing Pressure Relieving Joint Company, an unincorporated company or association, filed on March 20, 1942.
4. Petition of G. F. Albin for restraining order, filed on February 21, 1942.
5. Order restraining and enjoining prosecution of any and all claims against the alleged bankrupt, entered on February 21, 1942.
6. Petition of Peter Masterson, Trustee, for a rule to dissolve and vacate restraining order, filed on Friday, March 20, 1942.
7. Motion of G. F. Albin to dismiss petition of Peter Masterson, Trustee, for a rule to dissolve and vacate restraining order, filed on March 26, 1942.
8. Order or decree dissolving and vacating restraining order, entered on March 26, 1942.
9. Notice of appeal filed the 31st day of March, 1942.
10. Bond on Appeal.
- [fol. 32] 11. Statement of points filed by plaintiff-appellant.
12. This designation of portions of the record.

G. F. Albin, Petitioner Creditor, Plaintiff-Appellant,
by Thomas S. McCabe, His Attorney.

Thos. S. McCabe, Attorney for Plaintiff-Appellant, 105 West Monroe Street, Room 1004, Chicago, Illinois, Telephone: STate 2682.

Received a copy of the above and foregoing "Designation of Portions of the Record" this 1st day of April, 1942.

Willard C. Walters, Charles Aaron, Sidney J. Hess, Jr., Henry J.—Charles Aaron.

[fol. 33] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPLICATION FOR RESTRAINING ORDER—Filed
February 21, 1942

To:

Thomas Hart Fisher, 135 South LaSalle Street, Chicago,
Illinois

Peter Masterson, Trustee, and Cowing Pressure Relieving
Joint Company, 226 West Superior Street, Chicago,
Illinois

You and each of you please take notice that on Saturday, February 21, 1942, at the hour of ten o'clock A. M. or as soon thereafter as court convenes and counsel can be heard, the undersigned will appear before Judge John P. Barnes in the courtroom usually occupied by him in the Federal Building, Chicago, Illinois, or before such other judge as shall be sitting and hearing matters in his absence, and shall then and there present the petition of G. F. Albin, the petitioning creditor herein, praying that National Lead Company, Thomas Hart Fisher, Peter Masterson, Trustee, and Cowing Pressure Relieving Joint Company the alleged bankrupt, be and each of them be restrained and enjoined from prosecuting any and all causes of action either by or against the alleged bankrupt until the further order of this Court, at which time and place you may appear if you so desire.

Thomas S. McCabe, Attorney for petitioning creditor, 105 West Monroe Street, Room 1005, Chicago, Illinois, Telephone: STate 2682.

Received copy of the above notice this 20th day of February, A. D. 1942. Thomas Hart Fisher, M: E.

[fol. 34] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF PETITION TO VACATE RESTRAINING ORDER—Filed
March 20, 1942

To Thomas S. McCabe, 105 West Monroe Street, Chicago, Illinois, and Thomas Hart Fisher, 135 South La Salle Street, Chicago, Illinois:

You are hereby notified that on Friday, March 20, 1942, at the opening of court in the forenoon or as soon thereafter as counsel can be heard, we shall appear before the Honorable Michael L. Igoe, one of the Judges of the District Court of the United States for the Northern District of Illinois, Eastern Division, in the room usually occupied by him as a courtroom in the United States Courthouse, or in his absence before such other Judge as may be hearing motions, and shall then and there present the petition of Peter Masterson Trustee under trust agreement dated August 5, 1921, by and between John P. Cowing, Peter Masterson, Francis O'Shaughnessy and John P. O'Shaughnessy, and shall ask that an order be entered dissolving the restraining order entered in this proceeding on February 21, 1942, in accordance with the prayer of said petition, a copy of which is herewith served upon you, at which time and place you may appear as you see fit.

Dated, Chicago, Illinois, March 19, 1942.

Thomas Hart Fisher—M. E. Thos. A. McCabe, by
Harry W. Meneely.

Received a copy of the foregoing notice and of the petition therein referred to this 19th day of March, 1942.

Thomas Hart Fisher—M. E., Thos. A. McCabe,
By Harry W. Meneely.

[fol. 35] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING LEAVE TO FILE PETITION TO VACATE RESTRAINING ORDER AND SETTING PETITION FOR HEARING—
March 20, 1942

On motion of Attorneys for Peter Masterson as Trustee etc. It is Ordered that leave be and the same is hereby given

him to file instant a Petition and hearing be and the same is hereby given Petitioning Creditors to file an answer thereto within 5 days from this date and It is Ordered that the hearing on said petition and answer be and the same is hereby set for March 26th, 1942 before Judge Igoe.

[fol. 36] IN UNITED STATES DISTRICT COURT

[Title omitted]

DESIGNATION BY PETER MASTERSON, TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 5, 1921 BY AND BETWEEN JOHN P. COWING, ET AL (APPELLEE), OF ADDITIONAL PORTIONS OF THE TRIAL COURT RECORD—Filed April 10, 1942

The Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, hereby is directed to include in the authenticated trial court record in the above entitled cause the following documents, in addition to the documents and matters set forth and described in the designation heretofore filed by G. F. Albin, Plaintiff-Appellant:

1. Notice filed by G. F. Albin on February 21, 1942.
2. Notice filed by Peter Masterson, as Trustee, etc., on March 20, 1942.
3. Order entered March 20, 1942 granting leave to file petition and setting hearing thereon, March 26, 1942.
4. This designation of additional portions of the trial court record.
5. Certificate of Clerk that documents are true and correct copies of the documents and proceedings described.

Willard C. Walters, 135 South LaSalle Street, Chicago, Illinois; Charles Aaron, Sidney J. Hess, Jr., Henry J. & Charles Aaron, 33 South Clark Street, Chicago, Illinois, Attorneys for Peter Masterson, as Trustee aforesaid, Appellee.

[fol. 37] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 38]

[Caption omitted]

[fol. 39] IN UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Before Hon. J. Earl Major, Circuit Judge; Hon. Otto Kerner, Circuit Judge; Hon. Sherman Minton, Circuit Judge.

In the Matter of COWING PRESSURE RELIEVING JOINT COMPANY, ETC., Alleged Bankrupt

7982

G. F. ALBIN, Appellant,

vs.

COWING PRESSURE RELIEVING JOINT COMPANY, etc., et al.,
Appellees

Appeal from the District Court of the United States for
the Northern District of Illinois, Eastern Division

ORDER DENYING MOTION FOR SUPERSEDEAS AND DISMISSING

APPEAL—April 23, 1942

It is ordered by the Court that the motion of counsel for appellant G. F. Albin, for an order of supersedeas be, and the same is hereby, denied.

It is further ordered by the Court that this appeal be, and the same is hereby, dismissed, with costs, for lack of jurisdiction.

[fol. 40] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

NOTICE OF APPLICATION TO STAY MANDATE AND FOR A STAY
INJUNCTION—Filed May 28, 1942

To Henry J. & Charles Aaron and Sidney J. Hess, 33 South Clark Street; Willard C. Walters, 135 South LaSalle Street, Chicago:

Please take notice that on Friday, May 29, 1942, I will file in the United States Circuit Court of Appeals for the

Seventh Circuit, in the above entitled appeal, on behalf of the appellant, Application to Stay Mandate and to Grant Stay Injunction Staying Order Dissolving and Vacating the Restraining Order filed on March 26, 1942 in the District Court, together with form of Stay Order and Suggestions in Support of said application, a copy of which is herewith served upon you.

Please take notice that on the same date I shall likewise file a Praecipe for Record with the Clerk of said Court, a copy of which is likewise herewith served upon you.

Thomas S. McCabe, Attorney for Appellant.

[fol. 41] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

APPLICATION TO STAY MANDATE AND TO GRANT STAY INJUNCTION STAYING ORDER DISSOLVING AND VACATING THE RESTRAINING ORDER FILED ON MARCH 26, 1942 IN THE DISTRICT COURT—Filed May 28, 1942

Now comes G. F. Albin, petitioning creditor herein, appellant, by Thomas S. McCabe his attorney, and moves the Court to stay the issuance of the mandate herein and to grant a stay injunction staying the order dissolving and vacating the restraining order filed on March 26, 1942 in the District Court of the United States for the Northern District of Illinois, Eastern Division, in cause No. 77464 in bankruptcy until the Petition for Certiorari to the United States Supreme Court has been acted upon and until final disposition of the case by the Supreme Court, and in support of said motion and application respectfully shows the Court as follows:

1. Appellant has filed in this cause a Praecipe for Record and intends to file a Petition for Certiorari to the Supreme Court of the United States seeking to review and reverse the order of this Court entered on April 23, 1942 dismissing [fol. 42] this appeal for lack of jurisdiction.

2. As set forth in the appellant's Petition for Certiorari this case is one in which probable grounds exist for the issuance of such writ.

3. The granting of the stay orders prayed for will protect all parties and produce injury to none, and will preserve the assets of the alleged bankrupt until the Petition for Certiorari can be heard and decided.

4. The entire relief sought by this appeal will be denied to the appellant unless this Court shall stay the order dissolving and vacating the restraining order filed on March 26, 1942 in the District Court until the Petition for Certiorari to the United States Supreme Court has been acted upon and until final disposition of the case by the Supreme Court. The failure to grant the stay order prayed for will or may cause irreparable injury to the assets of the alleged bankrupt pending the appeal to the Supreme Court. The original restraining order was entered by the Honorable Michael L. Igoe on February 21, 1942 under the mandatory provisions of Section XI of the Bankruptcy Act of 1938. This Court has not *denied* this appeal upon the merits but has *dismissed* the appeal "for lack of jurisdiction." Since the sole purpose of the appeal is to secure the benefits of the original restraining order entered by Judge Igoe on February 21, 1942, and since the appellant [fol. 43] has been denied the benefit of a decision on this appeal upon the merits, the appellant is properly entitled to a stay order staying the mandate and staying the order dissolving and vacating the restraining order entered by Judge Igoe on February 21, 1942 until action and final disposition of this case by the Supreme Court of the United States upon the Petition for Certiorari aforesaid.

Wherefore, appellant prays this Court to stay the issuance of the mandate herein and to grant a stay injunction staying the order dissolving and vacating the restraining order entered by Judge Igoe on February 21, 1942 in the District Court of the United States for the Northern District of Illinois as hereinabove set forth.

Thomas S. McCabe, Attorney for Appellant.

[fol. 44] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

SUGGESTIONS IN SUPPORT OF MOTION FOR STAY ORDER—Filed
May 28, 1942

Section 8 (d) of the Act of February 13, 1925 (28 U. S. C. A. Sec. 350) provides that in any case subject to review

by the Supreme Court on a writ of certiorari, execution and enforcement of the judgment or decree from which the appeal is taken may be stayed for a reasonable time to enable the appellant to apply for and to obtain a writ of certiorari from the Supreme Court. The language of the statute is as follows:

"In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to apply for and to obtain a writ of certiorari from the Supreme Court."

Pursuant to a recommendation of the Judicial Conference (Act of September 14, 1922, Chapter 306, § 2, 28 U. S. C. A. § 218) a number of the Circuit Courts of Appeals have adopted a practice of staying the issuance of the mandate for thirty days on application of the appellant, the stay to continue until the Supreme Court has finally disposed of [fol. 45] the case, provided that, within the thirty-day period, the petitioner files proof that he has filed his petition for certiorari in the Supreme Court and has served the respondent therewith.

Pursuant to the foregoing the Circuit Courts of Appeals may grant a stay injunction pending Supreme Court review upon Petition for Certiorari where the decree to be reviewed is one refusing or vacating a restraining order or temporary injunction in the District Court, as in this case.

The leading case is *Hovey v. McDonald*, 109 U. S. 150. In that case it was specifically held that the court from which the appeal to the Supreme Court was taken had the power "to order a continuance of the *status quo* until a decision should be made by the appellate court, or until that court should order the contrary"; and the Supreme Court quoted from Rule 93 of the Supreme Court adopted in 1898, providing that when an appeal is taken in an equity suit from a decree granting or dissolving an injunction the court may "make an order suspending or modifying the injunction during the pendency of the appeal upon such terms as to bond or otherwise as he may consider proper for the security of the rights of the opposite party." Rule 93 of

the Supreme Court has now been superseded by Rule 38, paragraph 6, to the same effect. The court said (page 161):

"This power undoubtedly exists, and should always be exercised when any irremediable injury may result from the decree as rendered."

This case has been cited in many subsequent decisions. For example, in *Merrimack River Savings Bank v. Clay* [fol. 46] *Center*, 219 U. S. 527, the Supreme Court specifically held that "Obviously this (right to a stay order) may include a continuance of an injunction which would be otherwise vacated." To the same effect see:

Cotting v. Kansas City Stockyards Co., 82 Fed. 850 (affirmed 183 U. S. 79);

Western Union Telegraph Co. v. Wright, 168 Fed. 558;

Cumberland Tel. & Tel. Co. v. Louisiana Public Service Com., 260 U. S. 212;

Virginia R. R. Co. v. U. S., 272 U. S. 658;

Merchants' Warehouse Co. v. U. S., 283 U. S. 501; and

Champlin Refining Co. v. Corporation Com., 286 U. S. 210.

In the case of *Western Union Telegraph Co. v. Wright*, 168 Fed. 558, above cited, the court quoted from the *Slaughter-house cases*, 10 Wall. 273, and *Hovey v. McDonald*, 109 U. S. 150, to the effect that where the lower court has dissolved a temporary injunction the appellant is entitled to a stay order pending an appeal to the Circuit Court of Appeals or to the Supreme Court. This is precisely the situation in the case at bar.

The foregoing cases all hold that "the plain purpose of the (stay) order. . . . is to preserve the subject matter of the litigation until the rights of the complainant can be heard and decided."

Applying the foregoing rules to the present motion, it amply appears that the granting of the stay order as prayed for will protect all parties and produce injury to none. The effect of the entry of the stay order as prayed will be to preserve the assets of the alleged bankrupt until the Petition for Certiorari can be heard and decided. Since the entire relief sought by the appeal to the Supreme Court will be denied to the appellant unless this Court shall stay

[fol. 47] the order dissolving and vacating the restraining order in the District Court until the Supreme Court shall act upon and dispose of the Petition for Certiorari, the failure to grant the stay order prayed for will deprive the appellant of the very relief which he seeks and will cause irreparable injury to the estate of the alleged bankrupt if the suits against the alleged bankrupt to be stayed in the state courts be permitted to proceed to judgment during the pendency of the Petition for Certiorari before the Supreme Court.

Appellant particularly points out that this Court has not denied this appeal *upon its merits* but has dismissed the appeal "*for lack of jurisdiction.*" This is the basis of the Petition for Certiorari to the Supreme Court. It is earnestly submitted that a stay order should particularly be granted where, as in this case, the appellant has had no ruling of the Circuit Court of Appeals upon the merits of the order or decree appealed from.

It is also pointed out that Judge Igoe entered the original restraining order in the District Court on February 21, 1942 and that Judge Barnes dissolved the same restraining order, so that even in the trial court the District Court judges are divided as to whether the relief prayed for should or should not be granted.

Since no party to this proceeding can possibly be injured by the issuance of the stay order, but on the contrary the rights of the alleged bankrupt and all creditors claiming an interest in the assets of the alleged bankrupt's estate [fol. 48] will be fully protected and preserved by the issuance of such order, it is earnestly submitted that the stay order prayed for should be granted.

The form of the suggested order submitted with the application for a stay is drawn from the original restraining order entered by Judge Igoe on February 21, 1942 and follows the issuance of similar orders in other cases in the Circuit Courts of Appeals and in the Supreme Court of the United States.

Respectfully submitted,

Thomas S. McCabe, Attorney for Appellant.

[fol. 49] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

PROPOSED ORDER

The application for a stay injunction staying the order dissolving and vacating the restraining order entered on March 26, 1942 in the District Court of the United States for the Northern District of Illinois, Eastern Division, pending the disposal of this cause on the Petition for Certiorari to the Supreme Court of the United States is granted.

It is therefore ordered that the alleged bankrupt, Cowing Pressure Relieving Joint Company, an unincorporated company or association, its agents and attorneys, Peter Masterson, Trustee, Thomas Hart Fisher, National Lead Company, and all other creditors of said alleged bankrupt be, and they each are hereby restrained and enjoined from the prosecution of any and all claims against the alleged bankrupt; and said Peter Masterson and Thomas Hart Fisher and the alleged bankrupt be and they are hereby specifically restrained and enjoined from further proceeding with the action now pending in the Superior Court of [fol. 50] Cook County, Illinois, in the case entitled "*Felix B. Kilbride as Administrator with the Will Annexed of the Estate of Michael Masterson, Deceased, vs. Peter Masterson, et al.*, cause No. 34S 18698" until the further order of this Court.

Per: — —, Judge of the United States Circuit Court of Appeals for the Seventh Circuit.

Dated: — —, 1942.

[fol. 51] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER DENYING APPLICATION FOR STAY OF MANDATE AND FOR
A STAY INJUNCTION—JUNE 15, 1942

It is ordered by the Court that the motion of counsel for appellant to stay the issuance of the mandate of this Court

and to grant a stay of the injunction staying the order dissolving and vacating the restraining order filed on March 26, 1942 in the District Court, be, and it is hereby, denied.

[fol. 52] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

PRAECIPE FOR RECORD—Filed May 28, 1942

Now comes G. F. Albin, as Petitioning Creditor herein, plaintiff-appellant, by Thomas S. McCabe, his attorney, and hereby indicates the following portions of the record to be contained in the record which the Clerk of this Court is hereby requested to prepare for filing in the Supreme Court of the United States:

1. The entire record in the District Court of the United States for the Northern District of Illinois, Eastern Division, known as cause No. 77464 in bankruptcy, heretofore transmitted to this Court and contained in the record on appeal to this Court.

2. The order of this Court entered on April 23, 1942, dismissing this appeal for lack of jurisdiction.

3. Application and order to stay mandate and to grant stay injunction staying order dissolving and vacating restraining order filed on March 26, 1942 in the District Court of the United States for the Northern District of Illinois, Eastern Division.

[fol. 53] 4. This Praecipe for Record.

Thomas S. McCabe, Attorney for Plaintiff-Appellant.

PROOF OF SERVICE

STATE OF ILLINOIS,

County of Cook, ss:

Thomas S. McCabe, being first duly sworn, on oath deposes and says that he served the foregoing Praecipe for Record on Henry J. and Charles Aaron, Sidney J. Hess, and Willard C. Walters, attorneys for the appellee in the

above entitled appeal, by mailing true copies thereof to them at their respective offices in Chicago, Illinois, on May 28, 1942.

Thomas S. McCabe.

Subscribed and sworn to before me this 28th day of May, A. D. 1942. E. R. Johnson, Notary Public.
(Seal.)

[fol. 54] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 55] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 12, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(3050)

